

OFFICE OF THE GENERAL COUNSEL  
Division of Operations-Management

MEMORANDUM OM 95-12

February 2, 1995

TO: All Regional Directors, Officers-in-Charge,  
and Resident Officers

FROM: William G. Stack, Associate General Counsel

SUBJECT: Rules Regarding Modification of Role of  
Administrative Law Judges

On December 16, 1994, the Board promulgated the attached revisions to the Board's Rules and Regulations regarding the role of administrative law judges. These rule changes, which are effective February 1, 1995 through January 31, 1996, modify the role of the administrative law judges in facilitating the expeditious processing of unfair labor practice cases. Absent renewal by the Board, these rule changes will expire at the end of the one year period.

The rule, in part, increases the role of administrative law judges in the settlement process. During the experimental one year period, upon the request by any party or by the judge assigned to hear the case or on his or her own motion, the chief administrative law judge in Washington, DC, the deputy chief in San Francisco and the associate chiefs in Atlanta and New York have the discretion to assign a judge other than the trial judge to conduct settlement negotiations. The assignment of a settlement judge will not be made, however, unless all parties agree to the procedure.

The rule states that the settlement judge may require that the parties or their representatives attend the settlement conference in person since such a meeting provides the best opportunity to engage in a fruitful discussion. In addition, the alleged discriminatees would be encouraged to attend the conference. When only the representative of a party is present, the party, or agent with full authority to settle, should be available by telephone. When personal attendance at a meeting is not feasible, the discussion could be conducted by conference call.

Discussions between the parties and the settlement judge would be confidential and would not be admissible in proceedings before the Board

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except by stipulation of the parties. The settlement judge would not be permitted to discuss any aspect of the case with the trial judge. The Regional Director has the discretion whether to select a supervisor, the investigating Board agent, the trial attorney or another individual as the Region's representative at the conference. During the conference, the Region's representative would have to be familiar with the facts and legal theory, as well as the settlement position of the charging party and the Director. When discussing the facts, the Region's representative would need to be prepared to discuss the legal theory and the nature of the evidence on specific violations. However, at no time would the names of possible witnesses be revealed. For specific guidance, Regions should continue to follow Casehandling Manual Section 10128.

Any settlement agreed upon during the conference would still be subject to approval by the Regional Director. If a unilateral settlement were approved, the existing appeal procedure would be available to the objecting party. In addition, this procedure does not affect the traditional role of the trial judge, both in terms of pursuing settlement and in resolving subpoena issues or working out stipulations prior to the opening of the hearing. In this regard, the settlement judge would not open the record in these cases.

In accordance with General Counsel policy, Regions should continue to make vigorous settlement efforts both prior and subsequent to issuance of complaint. Only after the Regions have fully exhausted settlement efforts should it consider whether a settlement judge would be beneficial in a particular case.

Inasmuch as the settlement judge program is experimental, it will be necessary to review the overall success of the program, including the extent to which, if at all, the number of settlements has increased. In order to make such an assessment, Regions are requested to complete a short reporting form for each case in which a settlement judge is assigned. The views of the Board agents involved in the proceedings should be included if they so desire. Please submit the attached reporting form to the Division of Operations-Management upon approval of a settlement or the close of the hearing. In addition, the parties should be requested to fill out a short questionnaire. (Copy attached).

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### Oral Argument in lieu of Briefs and Bench Decisions:

The modified rules also give administrative law judges the discretion to dispense with post-hearing briefs or proposed findings and conclusions, to hear oral argument in lieu of briefs, and to issue bench decisions. The Board has not set forth, in the rules, the circumstances in which these procedures should be utilized. The Board has suggested, however, that cases in which it may be appropriate to dispense with briefs and/or to issue bench decisions would include: cases that turn on very straightforward credibility issues; cases involving one-day hearings; cases involving a well-settled legal issue where there is no dispute as to the facts; short record single issue cases; or cases in which a party defaults by not appearing at the hearing. The rules provide that the administrative law judge "shall notify the parties at the opening of the hearing or as soon thereafter as practicable he or she may wish to hear oral argument in lieu of briefs."

With respect to bench decisions, the rules give administrative law judges the authority to render bench decisions within 72 hours after the conclusion of oral argument. If a bench decision is issued, the administrative law judge must certify the accuracy of the transcript pages containing the decision; file with the Board a certified copy of those pages, together with any supplementary matter the judge may deem necessary to complete the decision; and serve a copy on each of the parties. Upon the filing of the decision, the Board will issue an order transferring the case to the Board and serve a copy on the parties. Accordingly, the period for filing exceptions to an administrative law judge's bench decision does not commence until the date of service of the order transferring the case to the Board.

Any questions regarding this memorandum may be addressed to me or to your Assistant General Counsel.

W. G. S.

Attachments

cc: NLRBU

**SETTLEMENT JUDGE PROGRAM  
REGIONAL OFFICE REPORTING FORM**

1. Case Name and No. \_\_\_\_\_

2. Date of Conference \_\_\_\_\_

3. Date of Scheduled Trial \_\_\_\_\_

4. What issues or other factors prevented a settlement prior to the settlement judge conference? Please be specific.

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5. The settlement judge was requested by:

Region \_\_\_\_\_

Charging Party \_\_\_\_\_

Charged Party \_\_\_\_\_

Other \_\_\_\_\_ (Please identify \_\_\_\_\_)

6. Why did the Region request or agree that this case should be selected over other cases on the trial docket for a settlement conference? Please be specific.

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7. Was the conference held: in person \_\_\_\_\_  
by telephone \_\_\_\_\_

8. Did all attorneys/representatives attend the conference?  
Yes \_\_\_\_\_ No \_\_\_\_\_

Did all principals attend the conference? Yes \_\_\_\_\_ No \_\_\_\_\_  
If not, who failed to attend?

9. Did the settlement conference produce a settlement?  
In Full \_\_\_\_\_ Partially \_\_\_\_\_ No \_\_\_\_\_

**If Answer to Number 9 is No, please skip to Number 11.**

10. Did the settlement judge have a significant role in reaching a settlement?  
Yes \_\_\_\_\_ No \_\_\_\_\_ Unsure \_\_\_\_\_

Please explain. \_\_\_\_\_

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11. What were the reasons that the case did not (completely) settle notwithstanding the settlement conference. Please be specific.

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We would appreciate if you could complete the following questionnaire in order to assist the Agency in evaluating the Settlement Judge Program. The completed form should be returned to the Regional Office.

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2. Do you represent: Charging Party \_\_\_\_\_ Respondent \_\_\_\_\_  
Other \_\_\_\_\_

3. What issues or other factors prevented a settlement prior to the settlement judge conference? Please be specific.

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4. Did the settlement conference produce a settlement?  
In Full \_\_\_\_\_ Partially \_\_\_\_\_ No \_\_\_\_\_

**If Answer to Number 4 is No, please skip to Number 6.**

5. Did the settlement judge have a significant role in reaching a settlement?

Yes \_\_\_\_\_ No \_\_\_\_\_ Unsure \_\_\_\_\_

Please  
explain. \_\_\_\_\_

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6. What were the reasons that the case did not (completely) settle  
notwithstanding the settlement conference. Please be specific.

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7. If the case did not (completely) settle notwithstanding the settlement conference, did the case settle prior to trial? Yes \_\_\_\_\_ No \_\_\_\_\_  
If yes, what change occurred which allowed the case to settle?

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8. Please provide any other comment or recommendation with respect to the settlement judge program.

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